

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the Register first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the Arizona Administrative Register after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 6. ECONOMIC SECURITY

CHAPTER 10. DEPARTMENT OF ECONOMIC SECURITY THE JOB OPPORTUNITIES AND BASIC SKILLS (JOBS) PROGRAM

PREAMBLE

1. Sections Affected

R6-10-111.
Article 2.
R6-10-201.
R6-10-202.
R6-10-203.
R6-10-204.
R6-10-205.
R6-10-206.
R6-10-207.
R6-10-208.
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R6-10-211.
R6-10-212.
R6-10-213.
R6-10-214.
R6-10-215.
R6-10-216.
R6-10-217.
R6-10-218.
R6-10-219.
R6-10-220.
Article 3.
R6-10-301.
R6-10-302.
R6-10-303.
R6-10-304.

Rulemaking Action

Amendment
New Article
New Section
New Section
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2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 41-1954(A)(3); 46-134(12).

Implementing statutes: A.R.S. §§ 41-2026-2027; Laws 1994, Ch. 301, §§ 2-19.

3. The effective date of the rules:

December 11, 1995

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening:

1 A.A.R. 820, June 23, 1995

Notice of Proposed Rulemaking:

1 A.A.R. 1544, September 8, 1995

Notice of Oral Proceedings:

1 A.A.R. 1546, September 8, 1995

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Amended Notice of Oral Proceedings:

1 A.A.R. 1600, September 15, 1995

5. The name and address of agency personnel with whom persons may communicate regarding the rule:

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6. An explanation of the rule, including the agency's reasons for initiating the rule:

As part of a comprehensive series of welfare reform measures, the Department of Economic Security obtained federal approval to lower the age range for mandatory JOBS program participation for teenage custodial parents. Participation in the JOBS program is a condition of AFDC eligibility for teenage custodial parents. The goal of this change is to assist more teenage custodial parents to achieve self-sufficiency through eventual employment. The Department is amending R6-10-111 to lower the age range for mandatory JOBS participation from "16" to "13."

Laws 1994, Ch. 302, §§ 2-19 ("the JOBSTART Bill") require the Department of Economic Security to establish a "full employment demonstration project" as one part of a comprehensive welfare reform program. The demonstration project (called "JOBSTART") will operate in Pinal County in the cities of Eloy, Coolidge and Casa Grande. JOBSTART allows individuals receiving both AFDC and food stamps to work for public or private sector employers for minimum wage or above. The Department uses the recipients' AFDC and food stamp benefits to partially reimburse employers for wages paid to the employed recipients. The Project is designed to determine the effects of diverting the AFDC and food stamp benefits of project participants to employers who will pay Project participants wages earned through employment, and to evaluate whether such a program will lead to self-sufficiency and elimination of welfare dependency.

The JOBSTART Bill requires the Department to adopt a comprehensive set of rules governing operation of the JOBSTART program. The proposed rules address the operations of the demonstration project, including eligibility criteria for employers and participants, and explain the duration, participant and employer requirements, grant diversion, the consequences of noncompliance, supplemental payments, employer reimbursements, and sanctions.

Federal law (45 CFR 251) and Laws 1994, Ch. 302, §§ 2-19 ("the JOBSTART bill") require the Department to establish and maintain a grievance procedure permitting regular employees of an employer, with whom JOBS participants are placed, to grieve displacement by a subsidized, or unpaid, JOBS employee. The proposed rules establish an informal grievance procedure for displaced employees. The rules also allow employers to use the same process to grieve wrongdoings under specified circumstances. Last, the rules provide higher appeals to federal authorities, as required by 45 CFR 251.4.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

8. The summary of the economic, small business and consumer impact:

Teenage Custodial Parents

The proposed rules regarding provision of JOBS services to teenage custodial parents receiving AFDC will allow these parents to acquire education and skills to avoid long-term welfare dependency. Taxpayers will benefit from an expected decrease in welfare benefits. DES will be directly impacted by this rule because of the increase in the number of persons served. However, because the number of custodial teen parents affected is minimal, neither the Department nor the community will realize any significant costs.

JOBSTART

The proposed rules for JOBSTART will impact recipients of both AFDC and food stamps who live in the project area. These recipients will be placed in subsidized employment and will benefit from the acquisition of skills, training, and expanded employment opportunities. The employers in the targeted communities who participate in JOBSTART will benefit by having employees at only the cost of training expenses. Taxpayers will ultimately benefit from the Project due to the expected decrease in welfare benefits. There will be little increase in costs to taxpayers because the monies being diverted to a wage pool and used to reimburse employers would otherwise be spent on welfare benefits for the participating recipients.

Within the Department of Economic Security, both the Job Opportunities Basic Skills (JOBS) Administration and the Family Assistance Administration (FAA) are incurring costs to implement and enforce the JOBSTART Program as reflected in these proposed rules.

Three communities within Pinal County have been targeted for implementation of the proposed Project. Two of these communities are currently experiencing a labor shortage. No costs will be incurred by these entities. These communities may ultimately benefit from this Project because of the availability of new employees and the subsidies which will offset their wages and other employer costs to operate a business.

Grievance Procedures

Currently, an informal grievance procedure is available for regular employees of an employer to file a grievance with the Depart-

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ment regarding displacement by a JOBS participant. This procedure has never been formally described in rule. The proposed rules provide the grievance procedures for both employees and employers to formally grieve wrongdoings under specified circumstances for both the regular JOBS program and for the JOBSTART demonstration project. Because the procedure already exists, and the Department is simply codifying the procedure in rule, no new costs will be incurred. There will be intangible benefits to grievants because the rules will provide clarity about the process.

9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

The Department received no comments from the public. The Department made the following changes between the proposed rules and the adopted rules as a result of comments received from staff of the Governor's Regulatory Review Council:

R6-10-205

To clarify the process, the wording was changed to "recalculated" rather than "at redetermination".

8. *The exclusion of a portion of wages when AFDC and food stamp benefits are ~~at redetermination~~ recalculated as prescribed in R6-12-1305(A)...*

To further understanding of "EITC", the phrase "as allowed under the Internal Revenue Code and disregarded as income as prescribed in R6-12-503(3)" was added.

9. *The potential eligibility for advance Earned Income Tax Credits (EITC) as allowed under the Internal Revenue Code and disregarded as income as prescribed in R6-12-503(3).*

R6-10-206

Because the statement was redundant and therefore unnecessary, R6-2-206(B) was deleted. Then, R6-10-206(C) was changed to R6-2-206(B).

- ~~B. The Department shall make all job referrals as prescribed in subsection (C).~~

R6-10-208

The sequence of events was changed to more appropriately represent the process.

- A. *At the end of each work week, an experimental shall ~~sign and send his or her JOBS worker~~ complete and sign the Department's form on which the experimental shall state his or her name, days and hours worked, and pay received. The experimental shall ~~have~~ obtain his or her supervisor's signature, or that person's designee, on sign the form and send the form to his or her JOBS worker.*

A statement was added to reflect the further consequences of an employer's failure to sign the Department's form.

- C. *If the experimental fails to send in the completed form, the Department shall sanction the experimental and withhold supplements. If the employer fails to sign the form, reimbursement payments to the employer will be delayed until the employer signs the form or is terminated for the failure to sign as prescribed in R6-10-219.*

R6-10-210

For verification of good cause, "or map" was added to claims of lack of transportation. In addition, it should be noted that the last item in this list would allow participants to provide other similar documentation that substantiates their claim of good cause.

4. *For claims of no public transportation, a bus schedule or map:*

R6-10-214

To be consistent with language in another rule, the word "debarred" was changed to "terminated".

12. *Not have been ~~debarred~~ terminated pursuant to R6-10-219;*

R6-10-219

The words "wrong or false" were changed to "untrue".

- A. *If the Department knows or learns of information indicating that the employer's certification, pursuant to R6-10-216, is or has become ~~wrong or false~~ untrue, the Department shall terminate the employer's participation in the Project, and shall not allow the employer to participate in the future, pursuant to the procedures prescribed in R6-10-220.*

R6-10-303

A statement was added to subsection (F) to clearly indicate that the aggrieved party may request a hearing by filing a request with the local JOBS office.

- F. *If the aggrieved party does not choose to seek an informal resolution as prescribed in subsections (C) and (D) above, the aggrieved party may request a fair hearing by filing a request with the local JOBS office.*

Subsection (F)(1) was added to subsection (F) and subsection (F)(2) became subsection (I) to more clearly follow the sequence of activities.

The phrase "through R6-12-101.3(A)" was moved to follow R6-12-1009 for better grammar and clarity.

- 1..... the office of Appeals will conduct hearings pursuant to R6-12-1005 through R6-12-1007 and R6-12-1009 through R6-12-1013(A), except that references to FAA shall be references to JOBS ~~through R6-12-1013(A)~~.*

Subsections (I) through (M) became a part of a new rule R6-10-304.

R6-10-304

A new rule was added to reflect the comment that it was difficult to follow the intent of the further appeal rights of employers and employees in R6-10-303. The new rule, formerly subsections (I) through (M) of R6-10-303, was divided into 2 subsections. Subsection R6-10-304(A) addresses employee rights to further appeal and subsection (B) addresses employer rights to further appeal.

Additional changes were made to correct format, delete a repeated subsection, change tenses; refer to "aggrieved party" rather than "claimant"; and change the term "complaint" to "grievance" for consistency.

10. A summary of the principal comments and the agency response to them:

The Department received no comments from the public. A comment was received from GRRC regarding the issue described below.

It was requested that R6-10-205(6) be more fully described regarding the process to be utilized in providing additional funds to offset losses incurred as a result of "cashing out" of food stamps and those dollars being reflected on the individuals income tax return. Under the "Terms and Conditions" of the Department's federal waiver packet, the Department was required to agree to this stipulation. At this time, however, the process has not been fully developed. The rule is meant to require the Department to inform participants of their potential eligibility for such benefits, but not to govern how eligibility will be determined. This is not expected to be necessary until 1997, at which time the experience of the Department will identify the necessity of such processes and the appropriate procedures. The Department will be able to then make the required modifications to the rule.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific agency or to any specific rule or class of rules:

Not applicable.

12. Incorporations by reference and their location in the rules:

None.

13. Was this rule previously adopted as an emergency rule?

No.

14. The full text of the rules follows:

TITLE 6. ECONOMIC SECURITY

**CHAPTER 10. DEPARTMENT OF ECONOMIC SECURITY
THE JOB OPPORTUNITIES AND BASIC SKILLS (JOBS) PROGRAM**

ARTICLE 1. JOBS: GENERAL PROVISIONS

R6-10-111. The Teen Parent Model

ARTICLE 2. JOBSTART

- R6-10-201. Definitions
- R6-10-202. Project Applicability
- R6-10-203. Selection Criteria for Participation
- R6-10-204. Classification as an Experimental or Control
- R6-10-205. Project Orientation for Experimentals
- R6-10-206. Assessment for Project Employment Referrals and Employer Interviewers
- R6-10-207. Project Participation Requirements
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- R6-10-209. Duration of Participation: Extension
- R6-10-210. Failure of Experimentals to Comply. Good Cause, and Verification
- R6-10-211. Supplemental Payments and Good Cause
- R6-10-212. Fair Hearings: Grievances
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- R6-10-214. Employer Participation
- R6-10-215. Employer Agreement: Reports
- R6-10-216. Employer Certification
- R6-10-217. Limits on Employer Participation: Workforce Waiver
- R6-10-218. Employer Reimbursements
- R6-10-219. Termination of Employer Participation
- R6-10-220. Employer Sanctions and Grievances

ARTICLE 3. GRIEVANCE PROCEDURES

- R6-10-301. Definitions
- R6-10-302. Grievance - Regular Employees: Employer

- R6-10-303. Grievance Process
- R6-10-304. Further Appeal

ARTICLE 1. JOBS: GENERAL PROVISIONS

R6-10-111. The Teen Parent Model

- A. To qualify for the teen parent model, a person shall:
 - 1. Be age ~~16~~ **13** through age 19; and
 - 2. Be pregnant or the custodial parent of a child. For the purpose of this section a "custodial parent" means a parent who lives with his or her child.
- B. No change.

ARTICLE 2. JOBSTART

R6-10-201. Definitions

In addition to the definitions contained in R6-10-101 and in A.A.C. R6-12-1302, the following definitions apply in this Article unless the context otherwise requires.

- 1. "Control" means an individual in the Project who will receive regular JOBS Program services and case management.
- 2. "Designated geographic area" means the following towns and zip code areas: Coolidge, 85228; Eloy, 85231; and Casa Grande, 85222, 85223, and 85230.
- 3. "Employer" means a Project employer who hires an experimental during the course of the Project's duration.
- 4. "Experimental" means an individual in the Project who will be eligible for subsidized employment during the Project.
- 5. "Full-time employment" means employment of at least 40 hours per week.
- 6. "Project" means the 3-year JOBSTART demonstration project implemented through the JOBS Program in the

designated geographic area and includes experimentals and controls. The Project will determine the effects of diverting AFDC and food stamp benefits of experimentals to employers who will pay Project participants' wages earned through employment.

7. "Project employment" means the subsidized employment for which experimentals are hired.
8. "Regular employee" means an unsubsidized individual currently employed by a Project employer.

R6-10-202. Project Applicability

- A. The Department shall implement the Project on November 1, 1995. JOBS shall consider persons who reside in the designated geographic area and who are referred to JOBS, as prescribed in R6-10-105, on or for the 27 months following the implementation date, for inclusion in the Project.
- B. Persons selected for participation as prescribed in R6-10-203 and R6-10-204 are subject to these rules contained in Article 2.

R6-10-203. Selection Criteria for Participation

To be eligible for the Project, a participant shall:

1. Be a mandatory JOBS participant;
2. Reside in the designated geographic area;
3. Be receiving both AFDC and food stamps;
4. Be age 19 or older;
5. Be assigned to job search activities for the first time in this period in the Program;
6. Not be enrolled in a state-accredited, post-secondary institution full time, as defined by the institution;
7. Not be enrolled in a state-accredited, post-secondary institution half time, as defined by the institution, and employed at least 20 hours per week;
8. Be a high school (HS) graduate or have completed requirements for a HS diploma or general equivalency diploma (GED) except that, if it is likely the participant, other than a teenage custodial parent, can be matched with an employer with whom a HS diploma or GED program is offered at the work site, the participant shall be deemed to meet this requirement.

R6-10-204. Classification as an Experimental or Control

- A. After a participant qualifies for the Project and after JOBS determines that a participant is eligible for the Project as prescribed in R6-10-203, JOBS shall randomly classify the participant as an experimental or a control.
- B. No person selected for the Project may choose or volunteer to be an experimental or a control.

R6-10-205. Project Orientation for Experimentals

The Department shall provide Project orientation to experimentals. The orientation shall describe the Project, including:

1. The benefits of the Project;
2. The diversion of the experimental's AFDC and food stamp benefits for wage subsidy;
3. The consequences of failure to comply with Project requirements;
4. The availability of and the requirements to qualify for and obtain supplemental payments;
5. The fair hearing process for challenging adverse action or failure to receive a supplemental payment;
6. Potential entitlement to additional funds as an offset to the cost incurred as a result of the requirement that an experimental count the food stamp cash value as net income for income tax purposes;
7. The pass-through to the household of current month child support collected, and the disregard of this income when AFDC and food stamp eligibility benefits are calculated,

as prescribed in A.A.C. R6-12-504 and R6-12-1305(B);

8. The exclusion of a portion of wages when AFDC and food stamp benefits are recalculated, as prescribed in A.A.C. R6-12-1305(A); and
9. The potential eligibility for advance Earned Income Tax Credits (EITC) as allowed under the Internal Revenue Code and disregarded as income as prescribed in A.A.C. R6-12-503(3).

R6-10-206. Assessment for Project Employment Referrals and Employer Interviewers

- A. The Department shall assess experimentals for Project employment as prescribed in R6-10-106(B).
- B. The Department shall make job referrals by matching an experimental's skills, experience, and employment goal, with a Project employer's requirements. The Department shall also consider the following criteria in making Project employment referrals:
 1. Whether a referral will give an experimental additional employment opportunities because of skills learned through Project employment;
 2. Whether a referral is likely to result in a permanent, unsubsidized, or full-time employment for the experimental;
 3. The length and quality of training the Project employer will provide to the experimental;
 4. Wages, benefits, and opportunities for advancement;
 5. The employer's turnover rate; and
 6. Other comparable or similar factors.
- C. The Department shall schedule the experimental for an interview with the prospective employer and notify the experimental of the interview date, place, and time.
- D. The employer shall decide whether to hire an experimental.

R6-10-207. Project Participation Requirements

- A. An experimental shall abide by an employer's regular requirements regarding:
 1. Submitting an application for employment.
 2. Appearing for interviews.
 3. Providing necessary information such as citizenship verification.
 4. Hours of employment.
 5. Attendance.
 6. Job performance.
 7. Conduct, and
 8. Other similar conditions of the employment.
- B. An experimental shall comply with the following Project requirements:
 1. Sign the Departmental form agreeing to abide by Project requirements;
 2. Appear for pre-referral and assessment interviews with Department staff or its designee;
 3. File a report of employment days, hours, and pay received, as prescribed in R6-10-208;
 4. Accept and maintain subsidized employment;
 5. Establish good cause for failing to participate, as prescribed in R6-10-210;
 6. Report changes to JOBS which affect Project participation such as:
 - a. The need for additional supportive services as prescribed in R6-10-113 and R6-10-114.
 - b. Accepting or refusing an offer of employment.
 - c. Absence from or termination of employment.
 - d. Job position or function modifications, and
 - e. Other similar or comparable factors, and
 7. Ensure that their children between the ages of 6 and 16 receive school instruction as prescribed in A.R.S. § 15-

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R6-10-208. Monitoring

- A. At the end of each work week, an experimental shall complete and sign the Department's form on which the experimental shall state his or her name, days and hours worked, and pay received. The experimental shall obtain his or her supervisor's signature, or that person's designee, on the form and send the form to his or her JOBS worker.
- B. The Department shall use information on the form to determine:
1. Whether the experimental is entitled to a supplemental payment as prescribed in R6-10-211;
 2. The amount of reimbursement for Project employers as prescribed in R6-10-218; and
 3. The experimental's compliance with the Project.
- C. If the experimental fails to send in the completed form, the Department shall sanction the experimental as prescribed in A.A.C. R6-12-1307 and withhold supplements. If the employer fails to sign the form, reimbursement payments to the employer will be delayed until the employer signs the form or is terminated for the failure to sign, as prescribed in R6-10-219.
- D. If the experimental is engaging in job search activities as prescribed in R6-10-209(B), the experimental shall provide evidence of job search activities through attachment of the Department's form on which the experimental states:
1. His or her name;
 2. Employers contacted by name, address, and phone number;
 3. Description of contact; and
 4. Date of contact.

R6-10-209. Duration of Participation; Extension

- A. Experimentals may participate in Project employment for up to 9 months with 1 extension of 3 months. An experimental's employer must request the extension in writing and shall provide the following information on which the Department shall base its decision to extend:
1. Name of the experimental for whom the extension is requested.
 2. Position for which an extension is requested.
 3. What additional experience or training is needed to achieve competency.
 4. The employer's expectation for hiring the individual following the extension.
 5. The length of time for the extension, and
 6. Other similar or comparable factors indicating an extension is necessary.
- B. If the Department approves the extension for a fixed period of time, not to exceed 3 months, the employer shall allow the experimental to engage in up to 8 hours per week of job search activities during the extension period. The employer shall treat the search time as hours worked for the purpose of paying wages.
- C. Total Project employment time for an experimental shall not exceed 12 months.

R6-10-210. Failure of Experimentals to Comply, Good Cause, and Verification

- A. Experimentals shall comply with Program and Project requirements as prescribed in 6 A.A.C. 10.
- B. The following conduct constitutes a failure to comply with Project requirements, and the Department shall sanction the experimental as prescribed in R6-10-119 and R6-10-120:
1. Violation of any applicable rule in 6 A.A.C. 10, Article 2, except as otherwise provided in subsection (C) below;

and

2. Failure to sign the Department's form indicating a willingness to abide by Project requirements.
- C. The following constitutes failure to comply with Project employment requirements, and the Department shall sanction experimentals as prescribed in A.A.C. R6-12-1307(A):
1. Failure to appear for assessment or pre-referral interviews pursuant to R6-10-206;
 2. Failure to submit an employment application as required by the Project employer, without good cause as prescribed in subsection (D);
 3. Failure to appear for an employment interview without good cause as prescribed in subsection (D);
 4. Failure to accept subsidized employment without good cause as prescribed in subsection (D);
 5. Failure to maintain employment on at least 2 occasions unless:
 - a. The separation is initiated by the Project employer and the circumstances in subsection (C)(6) do not apply;
 - b. The separation is for reasons outside the control of the experimental; no reasonable alternative is available; and the experimental's attempts to adjust the work requirements or personal circumstances are unsuccessful; the reasons include those prescribed in subsection (E); or
 - c. The separation is due to an action or omission of the Project employer which rendered the work unsuitable, such as failing to pay the experimental on time, or as prescribed in R6-10-214(A)(1) through (7); or
 6. Willful misconduct resulting in subsidized employment termination; willful misconduct shall include, but is not limited to:
 - a. Disruptive behavior by the experimental of a severe enough nature to disrupt the performance of other employees or to impede the employer's business;
 - b. Unexcused tardiness and absences, as defined by the employer;
 - c. Refusal or failure to abide by the employer's job requirements;
 - d. Reducing employment hours; or
 - e. Substance abuse.
- D. The following circumstances constitute good cause for a failure to apply for, interview for, or to accept subsidized employment:
1. The participant refused a job offer due either to a strike, lockout, or similar labor dispute; or
 2. The job requires the participant to join a company union or to resign membership or refrain from joining a bona fide labor organization.
- E. The circumstances listed in R6-10-119(B)(2), (4) through (9), and (13) shall be good cause for failure to maintain employment. An experimental shall provide his or her JOBS worker with documentation to substantiate a claim of good cause for failure to maintain employment. Verification shall include:
1. For claims of illness or incapacity, a statement from a licensed physician;
 2. For a claim that child care is unavailable, a statement from the DES Child Care Administration;
 3. For a claim of an inoperable vehicle, an auto mechanic's statement that the only vehicle available is inoperable;
 4. For claims of no public transportation, a bus schedule or map;
 5. For claims regarding a court appointment, a copy of a court notice requiring appearance; and
 6. Other similar documentation demonstrating the experi-

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mental was unable to work for reasons beyond the experimental's control.

R6-10-211. Supplemental Payments and Good Cause

- A.** Each month, the Department shall make supplemental payments to experimentals as prescribed in A.A.C. R6-12-1306.
- B.** When an experimental's combined AFDC and food stamp monthly benefit amount exceeds the amount of the experimental's adjusted gross wages and supplemental payments for the same month, and the loss is due to an unpaid hour of absence as reported by the Project employer, the Department shall presume that each unpaid hour was not for good cause and withhold a supplemental payment to make up the difference. The Department shall send the experimental written notice of adverse action no later than 10 days following the end of the benefit month. At a minimum, the notice shall include the following information:
1. The information required for an adequate notice as described in A.A.C. R6-12-101(1), except that the notice is mailed as prescribed in this subsection;
 2. The experimental's right to provide documentation of good cause for such absence as prescribed in R6-10-210(E), and the experimental's right to receive a supplemental payment if the Department finds that the experimental has established good cause; and
 3. The experimental's responsibility to provide documentation of good cause to JOBS within 10 calendar days from the date of the notice to avoid withholding of the supplemental payment pending the outcome of a fair hearing.
- C.** The Department shall provide a supplemental payment reconciling the difference no later than 10 days after the end of the month in which the experimental establishes good cause if:
1. The experimental provides verification of good cause as described in R6-10-210(E); and
 2. The verification is received by JOBS within 10 calendar days of the date the adverse action notice was mailed.
- D.** The Department shall not provide the experimental a supplemental payment reconciling the difference if the experimental does not request a hearing or requests a hearing but waives the continuation of benefits pending the outcome of the hearing, and either:
1. The experimental does not provide any verification of good cause, or
 2. The experimental does not timely provide verification of good cause.

R6-10-212. Fair Hearings: Grievances

The Department shall conduct hearings on appeals of adverse action as prescribed in 6 A.A.C.10, Article 3. Grievances are also governed by 6 A.A.C.10, Article 3.

R6-10-213. Support Services

The Department shall provide support services to experimentals as prescribed in R6-10-113 and R6-10-114.

R6-10-214. Employer Participation

- A.** An employer who wants to participate in the Project shall notify the Department's JOBSTART office in the community where the employer is located. To qualify for participation, an employer shall satisfy the following criteria:
1. Agree to place an experimental in a permanent, full-time position, not a seasonal or temporary position;
 2. Reasonably expect to offer the experimental an opportunity for full-time, unsubsidized employment;
 3. Normally require the experimental to work no more than an average of 40 hours per week;
 4. Not place the experimental in a position that will displace a regular employee;

5. Pay wages that are substantially like the wages paid for similar jobs, with like adjustments for experience and skills, but never less than federal minimum wage;
 6. Maintain safety, health, and working conditions at or above levels generally acceptable in the industry and no less than that of comparable jobs offered by the employer;
 7. Provide training at the worksite which is necessary to meet the competency standards for the position;
 8. Provide health care coverage, sick leave, holiday and vacation leave, and other comparable benefits in conformance with the employer's rules for new employees;
 9. Provide Workers' Compensation coverage;
 10. Provide a mentor to the Project participant;
 11. Help the experimental obtain any advance Earned Income Tax Credit for which the experimental may be eligible;
 12. Not have been terminated pursuant to R6-10-219;
 13. Sign the agreement as prescribed in R6-10-215(A);
 14. Sign the Department's certification form as prescribed in R6-10-216; and
 15. Not have a workforce composed of more than 10% experimentals unless the Department grants a waiver pursuant to R6-10-217.
- B.** If the employer satisfies the criteria listed in subsection (A), the employer may place a job order with the Department. The order shall include the following information on the available position:
1. Days and hours of work,
 2. Wages,
 3. Description of responsibilities,
 4. Benefits,
 5. Opportunity for advancement, and
 6. Other pertinent job-related information.
- C.** No employer is required to participate in the Project.

R6-10-215. Employer Agreement: Reports

- A.** An employer who wants to hire an experimental shall sign an agreement with the Department.
1. The employer shall affirm that the employer satisfies all of the selection criteria listed in R6-10-214(A) and will continue to meet all the selection criteria while participating in the Project.
 2. If the employer violates a Project requirement, the employer shall repay any reimbursements the employer receives after the date of the violation.
 3. The employer shall avoid conflicts of interest and the appearance of impropriety or favoritism in hiring practices, such as preferential hiring of relatives, friends, and business associates.
 4. The employer shall prepare and provide to the Department the following reports:
 - a. No later than the 2nd workday following the end of each calendar month, the employer shall report the following information for each experimental:
 - i. Gross wages;
 - ii. Federal and state income taxes, and FICA contributions deducted from gross wages;
 - iii. The employer's costs for the Social Security portion of FICA; and for Unemployment Insurance and Workers' Compensation premiums;
 - iv. Number of paid hours of work (including paid hours of leave);
 - v. Hours for which an experimental was not paid because the experimental did not report for work; and
 - vi. Hours for which the experimental was not paid because the employer reduced available work

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hours.

- b. No later than the 10th workday of each calendar month following a month of work, the employer shall complete and provide to Department a one-page report on each experimental's performance. After the first 4 reports, the employer shall submit the report every 6 months. The report shall include the following information

- i. Skills (competencies) gained as a result of employment;
- ii. Ability to correctly and timely complete assignments;
- iii. General work habits such as punctuality, absenteeism, and neatness of work area; and
- iv. Development of effective and efficient working relationships with people, including supervisors, peers, and subordinates.

5. An employer shall allow Department staff to schedule and make visits to the worksite, so staff can observe an experimental's work activities and interview the experimental.

6. An employer shall verify information by signing the experimental's weekly participation report described in R6-10-208(A).

- B. The employer shall sign and date the agreement. A Department representative and the experimental shall also sign and date the agreement.

R6-10-216. Employer Certification

An employer who wants to participate in the Project shall also provide the Department with a signed, dated, certification form. On the form, the employer shall certify that the information listed in this section is true as to the employer and its principal officers and directors.

1. The employer is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency, the state of Arizona, or any other state.
2. The employer has not, within the preceding 3 years, been convicted of or had a civil judgment rendered against the employer for:
 - a. Fraud,
 - b. Antitrust,
 - c. Embezzlement,
 - d. Theft,
 - e. Forgery,
 - f. Bribery,
 - g. Falsification or destruction of records,
 - h. Making false statements, or
 - i. Receiving stolen property.

R6-10-217. Limits on Employer Participation; Workforce Waiver

- A. An employer may hire 1 or more experimentals but shall not fill more than 10% of the employer's total workforce at a worksite with experimentals, unless the Department approves a workforce waiver for the employer.

- B. An employer interested in obtaining a workforce waiver shall request the workforce waiver in writing on a Department form. The employer shall provide the following information concerning the worksite for which the employer seeks a waiver:

1. Employee data, including:
 - a. The number of employees employed at the worksite,
 - b. The number and type of positions available to experimentals, and
 - c. The wages and hours of the available positions;
2. The percent of the employer's workforce that the

employer seeks to fill with experimentals and the total experimental workforce percentage if the requested waiver were approved;

3. A statement that existing employees will not be adversely affected by the waiver, as described in R6-10-302, by the increased numbers of experimentals that may be hired; and

4. A statement explaining why the potential hires will benefit.

- C. The Department shall consider the information provided by the employer and the following factors in determining whether to grant the requested waiver:

1. Lack of suitable positions with other employers;
2. Quality of the employer's training and mentoring program;
3. Transferability of skills to other employment opportunities;
4. Local labor market factors affecting the employability of persons with the skills to be acquired;
5. Employer's history regarding permanent hiring of experimentals in unsubsidized employment; and
6. Wages, advancements, and other comparable factors.

- D. The Department shall send the employer a written notice advising the employer as to whether the Department will grant a waiver, the waiver percentage allowed, and the time period for the waiver, which shall not exceed 1 year. The Department is not obligated to renew a waiver and may cancel a waiver on 60 days' notice to the employer.

R6-10-218. Employer Reimbursements

- A. The Department shall compute an employer's reimbursement amount based on the information the employer provides pursuant to R6-10-215(A)(4).

- B. For each experimental, the employer's reimbursement for wages and employer's expenses shall not exceed:

1. A wage reimbursement that is the lesser of:
 - a. The gross wages paid to the experimental in the month;
 - b. Eight hours per day, up to 40 hours per week, times the federal minimum wage; or
 - c. The total AFDC plus food stamp benefits for the benefit month in which the wages were paid; plus
2. A reimbursement of the employer's share of the Social Security portion of F.I.C.A., Unemployment Insurance, and Workers' Compensation premiums that is the lesser of:
 - a. The employer's actual expense; or
 - b. The employer's expense based on an average of a 40-hour work week times the federal minimum wage.

- C. The Department shall issue the reimbursement no later than the 25th day of the same calendar month in which the employer's report is timely received. Late receipt of the form may delay reimbursements.

- D. The Department shall not issue reimbursements if the Department receives the report more than 30 calendar days after the end of the month for which a reimbursement is requested.

R6-10-219. Termination of Employer Participation

- A. If the Department knows or learns of information indicating that the employer's certification, pursuant to R6-10-216, is or has become untrue, the Department shall terminate the employer's participation in the Project and shall not allow the employer to participate in the future, pursuant to the procedures prescribed in R6-10-220.

- B. The Department shall terminate the employer's Project participation if the employer violates Project requirements and not

allow further participation in the Project pursuant to the procedures prescribed in R6-10-220.

- C. The Department shall also terminate the employer's participation in the Project if the employer has shown a pattern of either terminating experimentals before the completion of training or of not offering unsubsidized employment to experimentals who have successfully completed training with the employer.
1. The Department shall consider each occurrence of either circumstance in establishing the pattern.
 2. The Department shall not allow the employer to participate in the Project if the total occurrences exceed the greater of the following figures, unless the employer can establish good cause:
 - a. Two occurrences; or
 - b. 20% of the total number of experimentals placed with the employer.
 3. If the employer claims good cause, the employer shall provide proof that the experimental failed to meet the employer's requirements pursuant to R6-10-207(A), and that the employer attempted to establish a reasonable alternative with the experimental but was unsuccessful, due to circumstances outside the employer's control.

R6-10-220. Employer Sanctions and Grievances

- A. If the Department determines that an employer has violated Project requirements, as prescribed in R6-10-219, the Department shall take all of the following adverse actions against the employer:
1. Withhold any subsidized payments due the employer, following the date of the violation;
 2. Seek repayment of any amounts overpaid to the employer; and
 3. Not allow the employer to participate any longer in the Project as prescribed in R6-10-219;
- B. If the Department plans to take adverse action against an employer, the Department shall send the employer a written notice of adverse action. At a minimum, the notice shall include:
1. The name and address of the employer;
 2. The action taken and the reason for the adverse action;
 3. The authority for the action; and
 4. The employer's appeal rights.
- C. An employer who disagrees with the amount of an unsubsidized payment or who is subject to adverse action as prescribed in subsection (A) may file a grievance with the Department as prescribed in 6 A.A.C. 10, Article 3.
- D. The Department shall conduct grievance procedures pursuant to R6-10-303.

ARTICLE 3. GRIEVANCE PROCEDURES

R6-10-301. Definitions

The definitions in R6-10-101 and R6-10-201 apply in this Article unless the context otherwise requires.

R6-10-302. Grievances - Regular Employees; Employer

Regular employees of employers, with whom JOBS participants are placed in unpaid or subsidized jobs, may file a grievance regarding displacement as prescribed in this Article. As used in this Section, displacement shall include assigning a participant to a position which:

1. Results in the termination or reassignment of a regular employee;
2. Results in the reduction of non-overtime work, wages, or benefits of a regular employee;
3. Impairs an existing contract for service or a collective bargaining agreement;
4. Fills the position of a regular employee on layoff status;

5. Creates a new position for a participant when the new position performs substantially the same job functions as the position held by a regular employee on layoff, or who is subsequently terminated;
6. Infringes upon the promotional opportunities of a regular employee; or
7. Fills any established, unfilled position.

R6-10-303. Grievance Process

- A. Upon request, JOBS shall provide information to regular employees and Project employers regarding their right to file a grievance and the procedures for doing so.
- B. The aggrieved party may seek to informally resolve a grievance at the regional level with the JOBS Regional Program Manager, or that person's designee, or may request a fair hearing.
- C. To pursue informal resolution, an aggrieved party shall file a Departmental grievance form with the JOBS Regional Program Manager or designee. The form shall contain the following information:
1. Aggrieved party's name, address, and phone number;
 2. Date of grievance;
 3. Contact person, if other than the aggrieved party;
 4. Regional Program Manager or designee, address, phone number;
 5. A description of the action which is the subject of the grievance and the date of the action; and
 6. The proposed resolution.
- D. If the aggrieved party requests an informal resolution, the Department shall hold an informal resolution meeting with the aggrieved party within 15 working days from the date the Department receives the grievance.
- E. If a grievance is not resolved at the informal meeting, the aggrieved party may request a fair hearing with the Department of Economic Security, Office of Appeals, within 20 days from the date of the informal meeting, by sending a request for a fair hearing to the JOBS local office.
- F. If the aggrieved party does not choose to seek an informal resolution as prescribed in subsections (C) and (D) above, the aggrieved party may request a fair hearing by filing a request with the local JOBS office. An employer who requests a fair hearing shall file a request within 20 calendar days of the date of the adverse action notice as described in R6-10-220. Upon request, JOBS shall assist the aggrieved party in preparing the hearing request. Assistance shall include an explanation of the aggrieved party's right to a fair hearing, the fair hearing procedures, and the process.
- G. The date the hearing is deemed filed shall be in accordance with A.A.C. R6-12-1002.
- H. The JOBS local office shall prepare and forward the request for a hearing to the Office of Appeals. The JOBS office shall include:
1. The information submitted pursuant to subsection (C);
 2. The decision reached at the informal resolution meeting; and
 3. Any decision notice or other documents relating to the hearing request.
- I. Upon receipt of a request for a fair hearing, the Office of Appeals will conduct the hearings pursuant to A.A.C. R6-12-1005 through R6-12-1007 and R6-12-1009 through R6-12-1013(A), except that references to FAA shall be references to JOBS.

R6-10-304. Further Appeal

- A. Regular employees grieving displacement issues pursuant to R6-10-302 may appeal the decisions of a Department hearing officer as prescribed below:

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1. The aggrieved party shall send the appeal to:
Office of Administration Law Judges
U.S. Department of Labor
Vanguard Building, Room 600
1111 20th Street, N.W.
Washington, DC 20036
2. The aggrieved party shall send a copy of the appeal to the following:
 - a. Assistant Secretary for Employment and Training
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210; and
 - b. Assistant Secretary for Family Support
Department of Health and Human Services
370 L'Enfant Promenade, SW, 6th Floor
Washington, DC 20447
3. The aggrieved party shall include the following information in the appeal:
 - a. The full name, address, and telephone number of the aggrieved party;
 - b. Citations to provisions or regulations the aggrieved party believes have been violated;
 - c. A copy of the original grievance filed with the state; and
 - d. A copy of the state's finding and decision.
4. The decision of the Office of the Administrative Law Judges is the final decision of the Department of Labor.
- B. Employers grieving issues pursuant to R6-10-220 may appeal the findings of a Department hearing officer to the Department's Appeals Board as prescribed in A.A.C. R6-12-1014(A). The Appeals Board proceedings are conducted in accordance with A.A.C. R6-12-1015. An employer may appeal a decision of the Appeals Board as prescribed in A.R.S. § 41-1993(B).

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TITLE 18: ENVIRONMENTAL QUALITY

CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY

WASTE MANAGEMENT

PREAMBLE

1. Sections Affected

R18-8-260	<u>Rulemaking Action</u>
R18-8-261	Amend
R18-8-262	Amend
R18-8-263	Amend
R18-8-264	Amend
R18-8-265	Amend
R18-8-266	Amend
R18-8-268	Amend
R18-8-270	Amend
R18-8-271	Amend
2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
 Authorizing statute: A.R.S. § 49-922
 Implementing statute: A.R.S. § 49-922
3. The effective date of the rules:
 December 7, 1995
4. A list of all previous notices appearing in the Register addressing the final rule:
Notice of Rulemaking Docket Opening:
 1 A.A.R. 95, February 17, 1995

Notice of Proposed Rulemaking:
 1 A.A.R. 809, June 23, 1995
5. The name and address of agency personnel with whom persons may communicate regarding the rule:
 Name: Lynn A. Keeling, Rules Specialist

 Address: Department of Environmental Quality
 3033 North Central Avenue, Room 844A
 Phoenix, Arizona 85012

 Telephone: 602-207-2223
 Fax: 602-207-2251
6. An explanation of the rule, including the agency's reasons for initiating the rule:
 This rulemaking consists of incorporation of the Code of Federal Regulations and changes unique to Arizona's hazardous waste rules.

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A. Background about the Incorporation by Reference

Every year the Arizona Department of Environmental Quality (ADEQ) proposes amendments to the state's hazardous waste rules which incorporate 40 CFR 260 through 270 and 40 CFR 124 with changes to tailor the federal language to Arizona rule format. The state's hazardous waste rules are generally comprised of the federal regulations authorized by Subtitle C of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) which are the federal regulations incorporated by reference. The hazardous waste rules are well established and have been effective since 1984. This year's amendments are for changes in the federal regulations promulgated between July 2, 1993, and July 1, 1994.

Arizona is an authorized RCRA state. This means that Arizona implements its hazardous waste program rather than the EPA. Arizona must be reauthorized to ensure its rules are equivalent to and consistent with the federal hazardous waste program. For reauthorization, Arizona must either incorporate by reference the federal regulations or write state rules that are equivalent to and consistent with federal regulations. Incorporating the federal regulations will keep Arizona's hazardous waste management program equivalent to and consistent with the federal regulations as required by A.R.S. § 49-922. The United States Environmental Protection Agency (EPA) requires this to be done by ADEQ on a regular basis so that ADEQ can be reauthorized to implement the RCRA hazardous waste program in lieu of the EPA administering the program in Arizona. ADEQ received final RCRA authorization in 1985 and continues to apply for revisions to authorization (reauthorization) to keep current with changes in federal regulations. Furthermore, the adoption of federal regulations promotes compliance uniformity among states. The following federal regulations are incorporated by reference.

B. Incorporation by Reference

The rules incorporated by reference promulgated between July 2, 1993, and July 1, 1994, are listed with a brief explanation:

1. Testing and Monitoring activities found in parts 260 and 268 were updated to add new, yet optional, test methods. This action is necessary to provide more complete analytical test methods for RCRA and is intended to provide up-to-date technologies in order to promote cost-effectiveness and flexibility in choosing analytical test methods. ADEQ must incorporate the rule for reauthorization.
2. The EPA has decided not to presently list wastes from the use of chlorophenolic formulations in wood surface protection processes as hazardous wastes and is not requiring any new information collection requirements for owners and operators of wood surface protection plants. Although no new wastes from wood protection processes are listed as hazardous, first the EPA is adding certain constituents contained in these wastes to Appendix VIII of 40 CFR 261: the sodium and potassium salts of pentachlorophenol and of tetrachlorophenol. Listing these substances in this appendix provides notice that the EPA may later list them as hazardous wastes.
3. This incorporation corrects an erroneous statement found in 40 CFR 260.11(a) which incorporates by reference Update II of SW-846, Third Edition. Update II is still being developed and was not promulgated on January 4, 1994. The availability of Updates II and IIA from the U.S. Government Printing Office (GPO) was incorrect. Neither of these updates are available from the GPO at this time.
4. The quantity of contaminated media which are conditionally exempt from Subtitle C regulation when used in conducting treatability studies is increased from 1000 kg to 10,000 kg if media are contaminated with non-acute hazardous waste, and from 250 kg up to 2500 kg if media are contaminated with acute hazardous waste. This exemption was increased to promote treatability studies. The exemption is expected to help develop new technologies for treatment of contaminated media. The exemption promotes the studies by allowing a larger quantity of media to be exempt from the full regulations of the hazardous waste program provided the waste is a result of the treatability study. This regulation is a deregulatory action and does not impose any additional requirements.
5. A technical correction was published to add the word "powder" to the P015 listing description. This changes beryllium dust to beryllium powder.
6. Conforming changes were made to 40 CFR 260 and 266 to ensure that the guidelines for air quality modeling and screening for boilers and industrial furnaces burning hazardous waste are consistent with the guidelines in 40 CFR 51 (air regulations). Only references in this regulation are changed; therefore, the incorporation by reference poses no new requirements.
7. Current limits needed to qualify for the Bevill exemption were replaced. There was an error in the algorithm. This rule does not change the scope of the original rule; it merely corrects the error in the algorithm. This regulation is a deregulatory action.
8. Owners and operators of TSDFs are required to include additional language in their letter of credit instrument to clarify that the International Chamber of Commerce publication "Uniform Customs and Practice for Documentary Credits", which is cited in 40 CFR 264.151, is copyrighted. This regulation is a deregulatory action.
9. The disposal codes listed in Appendix I of 40 CFR 264 and 265, which are used to maintain records on-site, were modified to match the codes used on the Part A Permit Application Form. Additional handling codes were included to allow for a more precise recording of those processes specific to Boilers and Industrial Furnaces and Miscellaneous Units (Subpart X) facilities.

To identify the changes from the incorporation by reference, the rule date is changed from July 1, 1993, to July 1, 1994, in subsection (A) of most Sections. Subsection (A) of Sections R18-8-260 through R18-8-266, R18-8-268, R18-8-270, and R18-8-271 incorporates by reference the federal regulations published in 40 CFR 260 through 266, 268, 270, and 124 as of July 1, 1994. Sec-

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tions R18-8-267 and R18-8-272 through R18-8-278 are reserved and do not contain any regulations at this time. Section R18-8-279 is not required by the EPA at this time. Sections R18-8-269 and R18-8-280 are state rules that do not incorporate federal regulations.

The purpose of this rulemaking is primarily to incorporate the text of federal regulations for reauthorization by the EPA. Modifications to the text incorporated by reference are only intended to make the language consistent with state terminology and not intended to make any change to the content. For example, the federal regulations refer to the "EPA" because it is the agency responsible for implementation and enforcement of the regulations. However, since Arizona is authorized to implement and enforce the federal regulations, "EPA" is usually replaced with "ADEQ" when referring to the agency that implements the regulations. Because the changes to the federal regulations are generally to tailor the language to ADEQ, the changes to the incorporated text are not intended to have any additional impact beyond the federal regulation.

C. Changes in addition to the Incorporation By Reference
§ 260.2 Availability of Information

The first change other than an incorporation by reference is found in R18-8-260(D)(2)(e)(ii).

The authorizing statute for disclosure of information is A.R.S. § 49-928 which states the following: If the director, on his own or following a request for disclosure, disagrees with the confidentiality notice, he may request the attorney general to seek a court order authorizing disclosure. If a court order is sought, the person shall be served with a copy of the court filing and shall have twenty business days from the date of service to request a hearing on whether a court order should be issued. The director may not disclose the confidential information until a court order authorizing disclosure has been obtained and becomes final.

The statute requires review of confidential information by ADEQ to determine agreement or disagreement under only two conditions. The 1st condition occurs when a request for disclosure is made. The 2nd condition occurs when the Director, on the Director's own initiative, reviews the claimed confidential information to determine agreement or disagreement with the claim of confidentiality. The current rule, due to an error in sentence structure, requires the Director to review all claimed confidential information and does not clearly show the 2 instances when the Director reviews confidential information.

The proposed rule has been modified with the intent to more closely track the statute, A.R.S. § 49-928. The rule was written based upon different language that no longer is in the statute. The rule was originally promulgated in 1984, amended in 1988, and then the authorizing statute for confidential information changed in 1991. Consequently the rule does not match the statute; therefore the proposed rule is modified to match the statute. The rule currently states that the Director must review every single confidential claim within 20 working days of receipt of the confidential information. The statute does not impose this requirement; therefore the proposed rule removes the time limitation.

The proposed rule was changed to expressly state that the director only need review claimed confidential information under the 2 conditions found in the statute. The conditions are: 1) when a request for disclosure is made, or 2) when the Director initiates a voluntary review of the claimed confidential information.

When a request for disclosure of the confidential information is made to ADEQ, the proposed rule no longer restricts the Director's time for review to a 20-working-day limitation. One reason this change is needed is because the statute does not impose any deadlines; the 2nd reason is because the Director has a difficult time performing a thorough review under the current rule which allows 20 working days. A review by the Director includes review by staff, may include assignment of an attorney general, and a formal response provided to the claimant within 20 working days after the request for disclosure. ADEQ believes a thorough review is beneficial because the next required step is to obtain a court order if the Director disagrees with the confidentiality claim. Additionally, ADEQ does not believe that the lack of a deadline imposes any burden on the regulated community, because the information cannot be disclosed without a court order. Therefore, the change to the rule removes the 20 working days for review of a confidentiality claim.

The effect of the proposed rule change is that, when ADEQ receives different types of claimed confidential information which is requested for disclosure, the Director will no longer be restricted by the 20 working days to complete a review. Along with the statutory change, ADEQ has had an increase in requests by businesses for regulatory interpretations. The request is accompanied by information about the business and claimed confidential. Other businesses have been requesting disclosure of the information about new businesses. With the change in the rule, when a request for disclosure is made by a competing business, the Director must review all the confidential information, but the Director may now take more than 20 working days if needed.

In the case where the Director initiates a review of a confidential claim on his own, the Director shall notify the claimant of the request for disclosure, provide 20 additional working days pursuant to R18-8-262(D)(2)(e)(iii)(3) for the claimant to submit comments, and an additional 20 working days to evaluate the confidentiality claim after receipt of the comments. Again, the statute does not impose any timeframe. In this case, the timeframe was left in the rule, because it was achievable by ADEQ. The claimant is free to submit comments with the claimed confidential information and still take advantage of the 20 working days when notified by the director.

In summary, the changes to the rule text on confidential claims is intended to clarify the process and more closely match the state statute (A.R.S. § 49-928). It is ADEQ's desire to ensure a request for disclosure is completed as soon as possible, with a thorough review, and public records are accessible while confidential records are protected.

D. Definition of "Closure"

The definition of closure was modified to clarify the applicability of closure to a permitted facility and an interim status facil-

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ity. The definition of closure found in the federal regulations does not delineate between closure for a permitted facility or an interim status facility. The definition in the federal regulations could mean that closure applies to both permitted or interim status facilities. The language changes are intended to expressly state that closure applies to both types of facilities.

E. Deletion of Exceptions found in Definitions § 260.10, R18-8-260

The citations to §§ 264.11 and 265.11 found in the exceptions for references to EPA or EPA Administrator were deleted because these references to the "EPA" were exceptions to replacements of "ADEQ" for "EPA." The result of the deletion is that "EPA" should be replaced by "ADEQ." Prior to this rulemaking, the EPA assigned an EPA Identification number to hazardous waste generators. The EPA requested Arizona assume this function. With ADEQ performing the assignment of the EPA Identification number, these 2 exceptions are no longer necessary.

The citations to §§ 262.12 and 263.11 were deleted for the same reason as stated in the above paragraph. In this case, the references to the "Regional Administrator" need to be replaced with the "Director."

F. New definition of "Facility", R18-8-260

This definition of facility is required for RCRA reauthorization.

G. Form Name Change from Background Information to Form IC, Identification and Certification, R18-8-261

This change is to correctly state the name of the federal form. The form changed from "Background Information" to "Identification and Certification." The notation for where to mail the annual report is added to expressly state ADEQ's address. The requirement to send the report to ADEQ is not new. Therefore, the address of ADEQ is placed in the rule to eliminate any question as to the location where the annual report needs to be submitted.

H. §§ 262.12, 263.11 EPA Identification Number, R18-8-262, R18-8-263

This change is to move the responsibility for assignment of the EPA Identification Number from the EPA to the ADEQ. Notice that the only changes to the language from the federal language are noted in brackets "[]" and are found in the name and address portions of this Section.

I. Changes to § 262.34, "Accumulation time", R18-8-262(E)

The amendment to the incorporation by reference in this Section did not correctly incorporate all the language from the federal regulation in the state rule. The change to this rule clarifies the amendments are in addition to the incorporation by reference. The amendments in the current rule are found in subsection (E), which is deleted. This deletion results in the removal of the written log; therefore, subsection (L) is added to retain the written log requirement found in brackets (a state requirement). Cross references to §§ 265.444 and 265.1101(c)(4) were added to subsection (L) for conformity.

J. Change in § 262.41, R18-8-262

The references to rule citations were incorrectly listed as R18-8-264, R18-8-265 and R18-8-270, when in fact no generator would be required to comply with all 3 Sections. It is correct to refer to a generator that must comply with any 1 of the 3. Therefore the "and" is changed to "or." This matches the federal language.

K. Correction to the emergency response number, R18-8-262, R18-8-264, and R18-8-265

The emergency response number prefix is corrected from 257 to 207. Additionally, the toll-free emergency number was added. Therefore R18-8-262, R18-8-264, and R18-8-265 were modified to correct the phone number and include the toll-free number.

L. Sections R18-8-269 and R18-8-280 were listed in the "Notice of Proposed Rulemaking" and not in the adoption package. This is because there were no changes to these Sections.

M. Miscellaneous changes

Cross-reference corrections were made to conform to changes where new text was added to the rule.

N. Summary of the explanation of the rule

For Arizona to be reauthorized to implement the hazardous waste program and receive federal funding, ADEQ must adopt rules equivalent and consistent with the federal regulations. To satisfy this requirement, ADEQ chose to incorporate by reference federal regulations rather than write state rules.

This Register contains 2 rules that affect the hazardous waste rules found in R18-8-260 et seq. The final rule incorporates 40 CFR 260 through 266, 268, 270, and 271, as of July 1, 1994. The final rule became effective December 7, 1995. The proposed rulemaking incorporates 40 CFR 260 through 266, 268, 270, and 271, as of July 1, 1995. The proposed rulemaking also includes the new 40 CFR 273, Management of Universal Wastes. The proposed rule will not be effective until it is filed with the Secretary of State's Office after public comment and approval by the Governor's Regulatory Review Council.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

8. Summary of the economic, small business and consumer impact statement.

The benefits of this rulemaking are that ADEQ gets to implement the hazardous waste program and receive federal funding of about \$2 million per year for its effort. In order for ADEQ to maintain implementation authority, EPA must reauthorize Arizona annually.

This rule package has 2 categories of changes. The 1st category consists of the incorporation by reference of federal regulations

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and the 2nd category consists of changes that are specific to Arizona only. The 2 categories distinguish the probable costs. The incorporation of federal regulations does not pose an economic impact to Arizona because the EPA will enforce the federal regulations if Arizona does not.

The 2nd category of changes consists of those which are unique to Arizona. This category contains the following changes:

- The assignment of the EPA Identification number by ADEQ instead of the EPA.
- Confidential information.
- Correction to the emergency response phone number.
- Correction of the form name for annual reporting by recyclers.
- The definitions of "facility" and "closure".
- The change to "Accumulation Time."

The changes which are unique to Arizona are either corrections (typographical) or clarifications. There is no intention to change the scope of the rules by the above changes. There are no associated costs to business or consumers as a result of these changes.

9. Describe the changes made to the rules between proposal and final rules including all supplemental notices:

The changes follow:

- A. The 1st change affects R18-8-260(D)(2)(e)(iii).
(2) When a request for disclosure is made, the claimant shall be notified within 7 working days, by certified mail with return receipt requested, that the information under a claim of confidentiality has been requested and is subject to the Director's determination pursuant to subsection (D)(2)(e)(ii)(2).
- B. The 2nd change is a result of a typographical error discovered by ADEQ after the rule was proposed. The prefix for the emergency number at ADEQ is incorrect. The phone number is listed in R18-8-262(F), R18-8-264(D), and R18-8-265(D). The direct-dial phone number has been changed from 257-2330 to 207-2330, and, although a toll-free number is listed for the national emergency response group, we included ADEQ's toll-free number 800-234-5677.
- C. The final change was requested by the Secretary of State's Office. When the "Notice of Proposed Rulemaking" was submitted to the Secretary of State, all possible Sections that could be amended were included in the list of Sections involved in the rulemaking. Sections R18-8-269 and R18-8-280 were not amended and therefore omitted from the final rulemaking.

10. Summarize the principal comments received from the public and ADEQ's response to the comments:

- A. The 1st comment is for the rule to expressly state that a claimant who submitted confidential information shall be notified within 7 working days, by certified mail return receipt requested, when a request for disclosure has been made. The change merely places in rule a standard operating procedure at ADEQ. The new language is noted below by underline. The change will affect R18-8-260(D)(2)(e)(iii).
(2) When a request for disclosure is made, the claimant shall be notified within 7 working days, by certified mail with return receipt requested, that the information under a claim of confidentiality has been requested and is subject to the Director's determination pursuant to subsection (D)(2)(e)(ii)(2).
- B. The 2nd comment relates to the requirement that all confidential information be stamped or marked with "confidential trade secret" or "confidential information." The commenter suggested that the public should be allowed to mark confidential information with anything close to the words "confidential information" or "confidential trade secret." The commenter expressed concern that ADEQ would literally interpret the rule for marking confidential information. As a result of the literal interpretation, confidential information might be released to the public.

ADEQ could not find an instance where confidential information was released to the public because the document was not properly marked. ADEQ determined this change would cause more confusion than clarity; therefore the rule is not modified.

- C. The 2nd change is a result of a typographical error discovered by ADEQ after the rule was proposed. The prefix for the emergency number at ADEQ is incorrect. The phone number is listed in R18-8-262(F), R18-8-264(D), and R18-8-265(D). The direct-dial phone number has been changed from 257-2330 to 207-2330, and, although a toll-free number is listed for the national emergency response group, we included ADEQ's toll-free number 800/234-5677.

- D. The final change was requested by the Secretary of State's Office. When the "Notice of Proposed Rulemaking" was submitted to the Secretary of State, all possible Sections that could be amended were included in the list of Sections involved in the rulemaking. Sections R18-8-269 and R18-8-280 were not amended and therefore omitted from the final rulemaking.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable.

12. Incorporation by reference and their location in the rules:

40 CFR 260	R18-8-260
40 CFR 261	R18-8-261
40 CFR 262	R18-8-262
40 CFR 263	R18-8-263
40 CFR 264	R18-8-264
40 CFR 265	R18-8-265
40 CFR 266	R18-8-266

40 CFR 268	R18-8-268
40 CFR 270	R18-8-270
40 CFR 124	R18-8-271

11. Was this rule previously adopted as an emergency rule?
No.

12. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY

WASTE MANAGEMENT

ARTICLE 2. HAZARDOUS WASTES

Section

R18-8-260.	Hazardous Waste Management System: General
R18-8-261.	Identification and Listing of Hazardous Waste
R18-8-262.	Standards Applicable to Generators of Hazardous Waste
R18-8-263.	Standards Applicable to Transporters of Hazardous Waste
R18-8-264.	Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal
Facilities	
R18-8-265.	Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
R18-8-266.	Standards for the Management of Specific Hazardous Wastes and Specific Hazardous Waste Management Facilities
R18-8-268.	Land Disposal Restrictions
R18-8-270.	The Hazardous Waste Permit Program
R18-8-271.	Procedures for Permit Administration

ARTICLE 2. HAZARDOUS WASTES

R18-8-260. Hazardous Waste Management System: General

- A. The purpose of this Article is to establish rules and criteria for the identification, storage, treatment, transportation, and disposal of hazardous wastes which are generated, transported, treated, or disposed within the state of Arizona. Federal and state statutes and regulations cited in these rules are those adopted as of July 1, ~~1993~~1994, unless otherwise noted. 40 CFR 124, 260 through 266, 268, and 270, or parts thereof are adopted by reference when so noted. Federal statutes and regulations that are cited within 40 CFR 2, 124, and 260 through 270 that are not adopted by reference may be used as guidance in interpreting federal regulatory language.
- B. Any reference or citation to 40 CFR 124, 260 through 266, 268, and 270, or parts thereof, appearing in the body of this Article and regulations incorporated by reference, is inclusive of the new, amended, or replaced paragraphs and wording presented in this Article. When federal regulatory language that has been adopted by reference has been amended, brackets [] enclose the new language. Where appropriate, and to provide for ease of reading this Article, references to CFR section numbers and form are maintained.
- C. All of 40 CFR 260 and accompanying appendices, as amended as of July 1, ~~1993~~1994, (and no future editions), with the exception of §§ 260.1(b)(4) through (6), 260.20, 260.21, 260.22, 260.30, 260.31, 260.32, and 260.33, are incorporated herein by reference and modified by the following subsections of R18-8-260 and are on file with the Department of Environmental Quality (DEQ) and the Office of the Secretary of State.
- D. § 260.2, entitled "Availability of information; confidentiality of information" is amended by the following:

1. § 260.2(a). Any information provided to [the DEQ] under [R18-8-260 et seq. shall] be made available to the public to the extent and in the manner authorized by the [Hazardous Waste Management Act (HWMA), A.R.S. § 49-921 et seq.; the Open Meeting Law, A.R.S. § 38-431 et seq.; the Public Records Statute, A.R.S. § 39-121 et seq.; the Administrative Procedure Act, A.R.S. § 41-1001 et seq.; and rules promulgated pursuant to the above-referenced statutes], as applicable.
2. § 260.2(b) is replaced with the following:
 - a. A record or other information such as a document, a writing, a photograph, a drawing, sound or a magnetic recording, furnished to or obtained by the DEQ pursuant to the HWMA and regulations promulgated thereunder, shall be made available to the public to the extent authorized by the Public Records Statute, A.R.S. § 39-121 et seq.; the Administrative Procedure Act, A.R.S. § 41-1001 et seq.; and the HWMA, A.R.S. § 49-921 et seq. Specifically, such records or other information shall be disclosed to the public unless:
 - i. A statutory exemption authorizes the withholding of such information; or
 - ii. A record or other information contains a trade secret concerning processes, operations, style of work, or apparatus, or other information that the Director determines is likely to cause substantial harm to the person's competitive position.
 - b. Notwithstanding the previous provisions of subparagraph (a), the following shall apply:
 - i. Such records and other information shall be made available to the EPA upon request without restriction.
 - ii. The HWMA and regulations promulgated thereunder that require the disclosure of the name and address of a person who applies for, or receives, a HWM facility permit create an official purpose authorizing such disclosure.
 - iii. The DEQ and any other appropriate governmental agency may publish quantitative and qualitative statistics pertaining to the generation, transportation, treatment, storage, or disposal of hazardous waste.
 - iv. An owner or operator may expressly agree to the publication or to the public availability of such records or other information.
 - c. A person submitting such records or other information to the DEQ may claim that such information contains a confidential trade secret or other information likely to cause substantial harm to the person's competitive position. In the absence of such claim,

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the DEQ shall make the information available to the public on request without further notice. A claim of confidentiality shall comply with the following:

- i. It shall be asserted at the time the information is submitted to, or otherwise obtained by, the DEQ.
- ii. It shall be asserted by either stamping or clearly marking the words "confidential trade secret" or "confidential information" on each page of the material containing such information. Such claim shall be asserted only for those portions or pages which actually contain a confidential trade secret or confidential information.
- iii. It shall be asserted during the course of a DEQ inspection, or other observation, pursuant to the administration of the HWMA Program, by the person, hereinafter referred to as the "claimant", who shall clearly indicate to the inspector which specific processes, operations, styles of work, or apparatus constitute a trade secret. Such a claim shall be recorded on the inspection report and signed by the claimant.
- d. The Director shall provide the claimant with an opportunity to submit written comments to demonstrate that such information constitutes a legitimate confidential trade secret or confidential information. The comments shall be limited to confidential use by the DEQ. Pertinent factors to be considered by the Director for making a determination of confidentiality, and which may be addressed in the claimant's written comments, include the following:
 - i. Whether the information is proprietary;
 - ii. Whether the information has been disclosed to persons other than the employees, agents, or other representatives of the owner; and
 - iii. Whether public disclosure would harm the competitive position of the claimant.
- e. The Director shall make a determination of each confidentiality claim using the following procedures:
 - i. When a claim of confidentiality is asserted for information submitted as part of a HWM facility permit application:
 - (1) The claimant shall submit written comments demonstrating the legitimacy of the claim of confidentiality.
 - (2) The Director shall evaluate the confidentiality claim and notify the claimant of the result of that determination as part of the completeness review pursuant to § 124.3(c) (see R18-8-271(C)).
 - ii. When a claim of confidentiality is asserted for information submitted or obtained during an inspection, or for any other information submitted to or obtained by the DEQ pursuant to this Article, but not as part of a HWM facility permit application:
 - (1) The claimant may submit written comments demonstrating the legitimacy of the claim of a confidential trade secret or other confidential information within ten working days of asserting the confidentiality claim.
 - (2) ~~If a request for disclosure is made, the~~ the Director shall evaluate the confidentiality claim and notify the claimant of the result

of that determination ~~within 20 working days after the time for submission of comments. In all other instances, the Director may, on the Director's own initiative, evaluate the confidentiality claim and notify the claimant of the result of that determination within 20 working days after the time for submission of comments.~~

- iii. When any person, hereinafter referred to as the "requestor", submits a request to the DEQ for public disclosure of records or information, such records or information shall be disclosed to the requestor unless such information has been determined to be confidential by the Director, or is subject to a claim of confidentiality that is being considered for determination by the Director.
 - (1) If a confidentiality claim is under consideration by the Director, the requestor shall be notified that the information requested is under a confidentiality claim consideration and therefore is unavailable for public disclosure pending the Director's determination pursuant to R18-8-260(D)(2)(e)(ii)(2).
 - (2) When a request for disclosure is made, the claimant shall be notified within 7 working days, by certified mail with return receipt requested, that the information under a claim of confidentiality has been requested and is subject to the Director's determination pursuant to subsection (D)(2)(e)(ii)(2).
 - (3) If the Director disagrees with the confidentiality claim, the claimant shall have 20 working days to submit written comments either agreeing or disagreeing with the Director's evaluation.
 - ~~(2)~~(4) If a confidentiality claim is denied by the Director, the Director may request the attorney general to seek a court order authorizing disclosure pursuant to A.R.S. § 49-928.
- f. Records or information determined by the Director to be legitimate confidential trade secrets or other confidential information shall not be disclosed by the DEQ at administrative proceedings pursuant to A.R.S. § 49-923(A) unless the following procedure is observed:
 - i. The DEQ shall notify both the claimant and the hearing officer of its intention to disclose such information at least 30 days prior to the hearing date. The notice shall be accompanied by a copy of the confidential information that the DEQ intends to disclose;
 - ii. Both the claimant and the DEQ shall be allowed ten days to present to the hearing officer comments concerning the disclosure of such information;
 - iii. The hearing officer shall determine whether the confidential information is relevant to the subject of the administrative proceeding and shall allow disclosure upon finding that such information is relevant to the subject of the administrative proceeding;
 - iv. The hearing officer may set conditions for dis-

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closure of confidential and relevant information or the making of protective arrangements and commitments as warranted; and

- v. The hearing officer shall give the claimant at least five days notice before allowing disclosure of the information in the course of the administrative proceeding.

E. § 260.10, entitled "Definitions", is amended by adding all definitions from § 270.2 to this section (see R18-8-260 and R18-8-270), including the following changes, applicable throughout this Article unless specified otherwise:

1. No change.
2. No change.
3. No change.
4. No change.
5. "Closure" means for facilities with effective hazardous waste permits, the act of securing a HWM facility pursuant to the requirements of R18-8-264. For facilities subject to interim status requirements, "closure" means the act of securing a HWM facility pursuant to the requirements of R18-8-265.
6. No change.
7. No change.
8. No change.
9. No change.
10. No change.
11. No change.
12. ["EPA", "Environmental Protection Agency", "United States Environmental Protection Agency", "U.S. EPA", "EPA HQ", "EPA Regions", and "Agency" mean the DEQ with the following exceptions:
 - a. No change.
 - b. No change.
 - c. No change.
 - d. No change.
 - e. No change.
 - f. No change.
 - g. No change.
 - h. No change.
 - i. References in §§ 260.2(b) (see R18-8-260(D)(2)); 260.10 (definitions of "Administrator", "EPA region", "Federal agency", "Person", and "Regional Administrator" (see R18-8-260(E)); 260, Appendix I (see R18-8-260(C)); 260.11(a) (see R18-8-260); 261, Appendix IX (see R18-8-261(A)); 262.32(b) (see R18-8-262(A)); 262.50 through 262.57 (see R18-8-262(A)); 262, Appendix (see R18-8-262(A)); 263.10(a) Note (see R18-8-263(A)); ~~264.11 (see R18-8-264);~~ ~~265.11 (see R18-8-265(A));~~ 268.1(e)(3) (see R18-8-268); 268.5, 268.6, 268.42(b), and 268.44), which are non-delegable to the state of Arizona (see R18-8-268); 270.1(a)(1) (see R18-8-270); 270.1(b) (see R18-8-270(B)); 270.2 (definitions of "Administrator", "Approved program or Approved state", "Director", "Environmental Protection Agency", "EPA", "Final authorization", "Permit", "Person", "Regional Administrator", and "State/EPA agreement") (see R18-8-270(A)); 270.3 (see R18-8-270(A)); 270.5 (see R18-8-270(A)); 270.10(e)(1) through (2)

(see R18-8-270(A) and R18-8-270(D)); 270.11(a)(3) (see R18-8-270(A)); 270.32(a) and (c) (see R18-8-270(M) and R18-8-270(O)); 270.51 (see R18-8-270(P)); 270.72(a)(5) and (b)(5) (see R18-8-270(A)); 124.1(f) (see R18-8-271(B)); 124.5(d) (see R18-8-271(D)); 124.6(e) (see R18-8-271(E)); 124.10(c)(1)(ii) (see R18-8-271(I)); and 124.13 (see R18-8-271(L)).]

13. No change.
14. No change.
15. No change.
16. No change.
17. No change.
18. No change.
19. No change.
20. No change.
21. No change.
22. No change.
23. No change.
24. No change.
25. No change.
26. No change.
27. No change.
28. No change.
29. No change.
30. No change.
31. No change.
32. No change.

F. § 260.10, entitled "Definitions", as amended by subsection E also is amended as follows, with all definitions in § 260.10 (see R18-8-260), applicable throughout this Article unless specified otherwise.

1. No change.
2. "Administrator", "Regional Administrator", "Regional Administrator" or "state Director", or "Assistant Administrator for Solid Waste and Emergency Response" mean the [Director or the Director's authorized representative, except in §§ 260.10, definitions of "Administrator", "Regional Administrator", and "hazardous waste constituent" (see R18-8-260(E)); 261, Appendix IX (see R18-8-261(A)); ~~262.12;~~ 262, subpart E; 262, Appendix (see R18-8-262); ~~263.11 (see R18-8-263);~~ 264.12(a) (see R18-8-264(A)); 265.12(a) (see R18-8-265(A)); 268.5, 268.6, 268.42(b), and 268.44, which are nondelegable to the state of Arizona (see R18-8-268); 270.2, definitions of "Administrator", "Director", "Major facility", "Regional Administrator", and "State/EPA agreement" (see R18-8-270(A)); 270.3 (see R18-8-270(A)); 270.5 (see R18-8-270(A)); 270.10(e)(1), (2), and (4) (see R18-8-270(A) and R18-8-270(D)); 270.10(f) and (g) (see R18-8-270(A) and R18-8-270(E)); 270.11(a)(3) (see R18-8-270(A)); 270.14(b)(20) (see R18-8-270(A)); 270.32(b)(2) (see R18-8-270(N)); 270.51 (see R18-8-270(A)); 124.5(d) (see R18-8-271(D)); 124.6(e) (see R18-8-271(E)); 124.10(b) (see R18-8-271(I)).
3. "Facility" [or "activity" means;

- a. ~~any~~Any HWM facility or other facility or activity, including] all contiguous land, structures, appurtenances, and improvements on the land which are used for treating, storing, or disposing of hazardous waste, that is subject to regulation under the HWMA program. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).

- b. For the purposes of implementing corrective action under 40 CFR 264.101 (see R18-8-264), all contiguous property under the control of the owner or operator seeking a permit under Subtitle C of RCRA. This definition also applies to facilities implementing corrective action under RCRA Section 3008(h).

4. No change.
5. No change.
6. No change.

G. No change.

H. No change.

R18-8-261. Identification and Listing of Hazardous Waste

- A. All of Title 40 CFR 261 and accompanying appendices, as amended as of July 1, ~~1993~~1994, (and no future editions), with the exception of § 261.5(j), are incorporated herein by reference and modified by the following subsections of R18-8-261, and are on file with the DEQ and the Office of the Secretary of State.

- B. No change.
C. No change.
D. No change.
E. No change.
F. No change.
G. No change.
H. No change.
I. No change.

- J. § 261.6, entitled "Requirements for recyclable materials", paragraph (c) is amended by adding the following:

(3) Each facility that recycles hazardous waste received from off-site and that is not otherwise required to submit an annual report under R18-8-262 through R18-8-265 shall submit ~~Part 1, "Background Information," Form IC, "Identification and Certification", of the Facility Annual Hazardous Waste Report to the Director by March 1 for the preceding calendar year.~~ The annual report shall be mailed to: ADEQ, Hazardous Waste Technical Programs Unit, 3033 N. Central Ave., Phoenix, AZ 85012. The annual report shall be submitted on a form provided by the DEQ according to the instructions for the form.

K. No change.

L. No change.

R18-8-262. Standards Applicable to Generators of Hazardous Waste

- A. All of 40 CFR 262 and accompanying appendices, as amended as of July 1, ~~1993~~1994, (and no future editions), are incorporated by reference and modified by the following subsections of R18-8-262, and are on file with the DEQ and the Office of the Secretary of State.

B. No change.

C. No change.

- D. § 262.12, entitled "EPA identification numbers", paragraphs (a) and (b) are amended as follows:

(a) A generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the IDEQ.

(b) A generator who has not received an EPA identification number may obtain one by applying to the IDEQ using

EPA form 8700-12. [The completed form shall be mailed or delivered to: ADEQ, Hazardous Waste Technical Programs Unit, 3033 N. Central Ave., Phoenix, AZ 85012.] Upon receiving the request, the IDEQ will assign an EPA identification number to the generator.

~~D. E.~~ No change.

E. ~~§ 262.34, entitled "Accumulation time", paragraph (a)(1) is amended as follows:~~

~~The waste is placed in containers and the generator complies with Subpart I of 40 CFR 265, or the waste is placed in tanks and the generator complies with 40 CFR 265 subpart J, except §§ 265.197(c) and 265.200 [(see R18-8-265)]. In addition, such generator shall be exempt from all of the requirements in 40 CFR 265 subparts G and H, except for §§ 265.111 and 265.114 [(see R18-8-265)].~~

~~[A generator shall keep a written log of the inspections conducted in accordance with §§ 265.174 and 265.195 (see R18-8-265), of container and tank storage areas and for the containers or tanks located in these storage areas. The inspection log shall be kept by the generator for three years from the date of the inspection. The inspection log shall be filled in after each inspection and shall include the following information: inspection date, inspector's name and signature, and remarks/corrections.]~~

F. ~~§ 262.34 entitled "Accumulation time", paragraph (d)(5)(iv)(C) is amended as follows:~~

~~(C) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator has knowledge that a spill has reached surface water [or when a spill has discharged into a storm sewer or dry well, or such an event has resulted in any other discharge that may reach groundwater], the generator immediately [shall] notify the National Response Center (using their 24-hour toll-free number 800/424-8802) [and the DEQ (using their 24-hour number (602) 257-2330 or 207-2330 or 800/234-5677, extension 2330)]. The report [shall contain] the following information:~~

- (1) The name, address, and [the EPA Identification Number] of the generator;
- (2) Date, time, [location,] and type of incident (e.g., spill or fire);
- (3) Quantity and type of hazardous waste involved in the incident;
- (4) Extent of injuries, if any; and
- (5) Estimated quantity and disposition of recovered materials, if any.

G. ~~§ 262.41, entitled "Biennial Report", is amended as follows:~~

- (a) No change.
- (b) Any generator who treats, stores, or disposes of hazardous waste on-site, [and is subject to the HWM facility requirements of R18-8-264, R18-8-265, ~~and/or~~ R18-8-270,] shall submit [an annual] report covering those wastes in accordance with the provisions of 40 CFR § 264.75 [(see R18-8-264(F G)) and § 265.75 [(see R18-8-265(FG)).]

H. No change

I. No change.

J. No change.

K. No change.

~~L. [Any generator who must comply with 40 CFR 262.34(a)(1) (see R18-8-262) shall keep a written log of the inspections of container, tank, drip pad, and containment building areas and for the containers, tanks, and other equipment located in these storage areas in accordance with 40 CFR 265.174, 265.195, 265.444, and 265.1101(c)(4) (see R18-8-265). The inspection log shall be kept by the generator for three years from the date~~

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of the inspection. The inspection log shall be filled in after each inspection and shall include the following information: inspection date, inspector's name and signature, and remarks or corrections.

R18-8-263. Standards Applicable to Transporters of Hazardous Waste

A. All of 40 CFR 263, as amended as of July 1, ~~1993~~1994, (and no future editions), is incorporated herein by reference and modified by the following subsections of R18-8-263, and is on file with the DEQ and the Office of the Secretary of State.

B. § 263.11, entitled "EPA identification numbers", is amended by the following:

(a) A transporter must not transport hazardous wastes without having received an EPA identification number from the IDEQ.

(b) A transporter who has not received an EPA identification number may obtain one by applying to the IDEQ using EPA form 8700-12. [The completed form shall be mailed or delivered to: ADEQ, Hazardous Waste Technical Programs Unit, 3033 N. Central Ave., Phoenix, AZ 85012.] Upon receiving the request, the IDEQ will assign an EPA identification number to the transporter.

~~B.~~ C. § 263.20, entitled "The manifest system", is amended by adding the following:

[A transporter of hazardous waste, with the exception of hazardous waste shipments that originate outside of Arizona, must submit one copy of each manifest to the DEQ, in accordance with R18-8-263(~~E~~D).]

~~E.~~ D. No change.

~~D.~~ E. No change.

R18-8-264. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

A. All of 40 CFR 264 and accompanying appendices, as amended as of July 1, ~~1993~~1994, (and no future editions), with the exception of §§ 264.1(d) and (f), 264.149-150, and 264.301(i), are incorporated herein by reference, and modified by the following subsections of R18-8-264, and are on file with the DEQ and the Office of the Secretary of State.

B. *No Change*

C. § 264.11, entitled "Identification number", is replaced by the following:

1. A facility owner or operator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the DEQ.

2. A facility owner or operator who has not received an EPA identification number may obtain one by applying to the DEQ using EPA form 8700-12. The completed form shall be mailed or delivered to: ADEQ, Hazardous Waste Technical Programs Unit, 3033 N. Central Ave., Phoenix, AZ 85012. Upon receiving the request, the DEQ will assign an EPA identification number to the facility owner or operator.

~~E.~~ D. No change.

~~D.~~ E. § 264.56, entitled "Emergency procedures," subsection (d)(2) is amended as follows:

(2) [The emergency coordinator, or designee, shall] immediately notify [the DEQ at (602) ~~257-2330~~ 207-2330 or 800/234-5677, extension 2330, and notify] either the government official designated as the on-scene coordinator for that geographical area, (in the applicable regional contingency plan under 40 CFR 1510) or the National Response Center (using their 24-hour toll free number 800/424-8802). The report [shall include the following] :

(i) Name and telephone number of reporter;

(ii) Name and address of facility;

(iii) Time and type of incident (e.g., release, fire);

(iv) Name and quantity of material(s) involved, to the extent known;

(v) The extent of injuries, if any; and

(vi) The possible hazards to human health, or the environment, outside the facility.

~~E.~~ F. § 264.71, entitled "Use of manifest system", paragraph (a)(4) is amended as follows:

Within 30 days after the delivery, send a copy of the manifest to the generator [and submit one (1) copy of each manifest to the DEQ, in accordance with R18-8-264 (~~GH~~J).]

~~F.~~ G. No change.

~~G.~~ H. No change.

~~H.~~ I. No change.

~~I.~~ J. No change.

~~J.~~ K. No change.

~~K.~~ L. No change.

~~L.~~ M. No change.

~~M.~~ N. No change.

R18-8-265. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

A. All of 40 CFR 265 and accompanying appendices, as amended as of July 1, ~~1993~~1994 (and no future editions), with the exception of §§ 265.1(c)(2), 265.1(c)(4), 265.149, 265.150, and 265.430, are incorporated herein by reference and modified by the following subsections of R18-8-265, and are on file with the DEQ and the Office of the Secretary of State.

B. No change.

C. § 265.11, entitled "Identification number", is replaced by the following:

1. A facility owner or operator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the DEQ.

2. A facility owner or operator who has not received an EPA identification number may obtain one by applying to the DEQ using EPA form 8700-12. The completed form shall be mailed or delivered to: ADEQ, Hazardous Waste Technical Programs Unit, 3033 N. Central Ave., Phoenix, AZ 85012. Upon receiving the request, the DEQ will assign an EPA identification number to the facility owner or operator.

~~E.~~ D. No change.

~~D.~~ E. § 265.56, entitled "Emergency procedures," paragraph (d)(2) is amended as follows:

(2) [The emergency coordinator, or designee, immediately shall] notify [the DEQ at (602) ~~257-2330~~ 207-2330 or 800/234-5677, extension 2330, and notify] either the government official designated as the on-scene coordinator for that geographical area, (in the applicable regional contingency plan under 40 CFR 1510) or the National Response Center using their 24-hour toll-free number (800)424-8802). The report [shall include the following] :

(i) Name and telephone number of the reporter;

(ii) Name and address of the facility;

(iii) Time and type of incident (e.g., release, fire);

(iv) Name and quantity of material(s) involved, to the extent known;

(v) The extent of injuries, if any; and

(vi) The possible hazards to human health, or the environment, outside the facility.

~~E.~~ F. § 265.71, entitled "Use of manifest system", paragraph (a)(4) is amended as follows:

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Within 30 days after the delivery, send a copy of the manifest to the generator [and submit one (1) copy of each manifest to the DEQ, in accordance with R18-8-265(~~EH~~); and

- ~~F. G.~~ No change.
- ~~G. H.~~ No change.
- ~~H. I.~~ No change.
- ~~I. J.~~ No change.
- ~~J. K.~~ No change.
- ~~K. L.~~ No change.

- H. No change.
- I. No change.
- J. No change.
- K. No change.
- L. No change.
- M. No change.
- N. No change.
- O. No change.
- P. No change.
- Q. No change.

R18-8-266. Standards for the Management of Specific Hazardous Wastes and Specific Hazardous Waste Management Facilities

- A. All of 40 CFR 266, as amended as of July 1, ~~1993~~1994 (and no future editions), is incorporated herein by reference and is on file with the DEQ and the Office of the Secretary of State.
- B. No change.

R18-8-268. Land Disposal Restrictions

All of 40 CFR 268 and accompanying appendices, as amended as of July 1, ~~1993~~1994 (and no future editions), with the exception of Part 268, Subpart B, are incorporated herein by reference and on file with the DEQ and the Office of the Secretary of State.

R18-8-270. The Hazardous Waste Permit Program

- A. All of 40 CFR 270, as amended as of July 1, ~~1993~~1994 (and no future editions), with the exception of §§ 270.1(a), 270.1(c)(1)(i), 270.3, 270.10(g)(1)(i), 270.60(a) and (b), and 270.64, is incorporated herein by reference and modified by the following subsections of R18-8-270 and is on file with the DEQ and the Office of the Secretary of State.
- B. No change.
- C. § 270.2, entitled "Definitions", is amended by the following:
 "Closure" means [for facilities with effective hazardous waste permits, the act of securing a HWM facility pursuant to the requirements of R18-8-264]. For facilities subject to interim status requirements, "Closure" means the act of securing a HWM facility pursuant to the requirements of R-18-8-265.]
- D. No change.
- E. No change.
- F. No change.
- G. No change.
- H. No change.
- I. No change.
- J. No change.
- K. No change.
- L. No change.
- M. No change.
- N. No change.
- O. No change.
- P. No change.
- Q. No change.

R18-8-271. Procedures for Permit Administration

- A. All of 40 CFR 124 as amended as of July 1, ~~1993~~1994 (and no future editions), relating to HWM facilities, with the exception of §§ 124.1(b) through (e), 124.2, 124.4, 124.16, 124.20, and 124.21 is incorporated by reference and modified by the following subsections of R18-8-271 and is on file with the Department of Environmental Quality and the Office of the Secretary of State.
- B. No change.
- C. No change.
- D. No change.
- E. No change.
- F. No change.
- G. No change.